

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. HAMILTON, JR.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 04-1233-GMS
	:	
RICHARD KEARNEY,	:	
Warden,	:	
	:	
Respondent.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondent moves for an extension of time in which to file an answer to the petition. In support thereof, respondent states the following:

1. The petitioner, John H. Hamilton, Jr., has applied for federal habeas relief, challenging his January 2003 conviction in Delaware Superior Court for possession of cocaine, possession of drug paraphernalia and violations of probation. D.I. 2. By the terms of the Court's order, the answer is due to be filed on June 20, 2005.

2. Within the last three weeks, counsel for respondent has filed two answering briefs in appeals in the Delaware Supreme Court and will be filing an opening brief in another appeal this week. Further, the undersigned has been out of the office on several days for medical reasons and will be out of the office again on a previously scheduled vacation. In addition, the undersigned has been and continues to be working on other cases before this Court and the state courts. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondent's first request for an extension of time in this case.

5. Respondent submits that an extension of time to and including July 20, 2005 in which to file an answer is reasonable. Respondent submits herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: June 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2005, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on June 14, 2005, I have mailed by United States Service, the documents to the following non-registered participant:

John H. Hamilton, Jr.
28 Main Street
Farmington, DE 19950

/s/ Elizabeth R. McFarlan
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